

08.01.2021.
Item no. 78.
Court No. 13
ap

F.M.A. No. 751 of 2014
With
I.A. No. CAN 2 of 2016 (Old CAN 7432 of 2016)

Hasina Bibi & Ors.
Versus
The New India Assurance Co. Ltd. & Anr.

Mr. Krishanu Banik.

..For the appellants.

Mr. Sanjay Paul.

...For the respondent no.1.

This appeal is directed against the judgment and order dated 23rd August, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Burdwan in M.A.C. Case No. 31/36 of 2012 (Hasina Bibi & Ors. – Vs. – Maha Maya Das & Anr.).

The brief facts of the case are that on 2nd November, 2012 at about 6:30 hours when the victim was going to Tatarpur on the left side of the G.T. Road and at that time the offending vehicle bearing Registration No. WB-53A-4265 was coming from Memari side towards Tatarpur side with high speed and being driven in rash and negligent manner, the offending vehicle dashed the victim. As a consequence whereof serious injuries were sustained. The victim died at Burdwan Medical College and Hospital on the same day. The claim petition was filed under Section 163A of the Motor Vehicles Act, 1988.

The Tribunal below assessed the income of the victim at Rs.18,000/- notionally although the Schedule to Section 163A of the Motor Vehicles Act, 1988 prescribed Rs.15,000/-.

Learned Counsel for the appellants would vehemently argue before this Court that it has come on record from the evidence of PW-1 being the son of the victim that his father was a fruit seller in the locality and was 58 years of age and earned Rs.3,300/- per month. He would argue by reference to a decision of a Division Bench of this Court reported in 2018 ACJ 880 (National Insurance Co. Limited – Vs. – Sujata Manna & Ors.) that no formal documentary proof of income is necessary and that the income even oral evidence to that effect would suffice. One must bear in mind that the victim in the said Sujata Manna's case was 35 years old and was a barber. The said case was also u/s 166 of the M.V. Act, 1988.

In so far as the evidence of the instance case is concerned, this Court notes that PW-1 has stated that his father was 58 years old whereas the complaint before the police mentioned the victim's age had 80 years and the same is also proved from the post mortem report.

This Court has no hesitation in observing that PW-1 has deposed falsely in the Court below only with a view to make unlawful gain. No credence whatsoever was, therefore, rightly given to the evidence of PW-1 in so far as the income of the victim is concerned.

The Tribunal below, however, has not awarded general damages in terms of the Schedule to Section 163A of the Motor Vehicles Act, 1988.

A sum of Rs.9,500/- should have been awarded to the appellants. Hence, the appellants shall be entitled to only a sum of Rs.9,500/- together with interest at the rate of 7% per annum on and from the date of filing of the claim petition till the date of actual payment.

The Award is modified only to the extent indicated hereinabove.

The payment of the aforesaid sum shall be made within 45 days of the receipt of the Bank particulars of the appellant no.1 from the Counsel for the appellants to the Counsel for the Insurance Company.

With the aforesaid directions, the instant appeal shall stand disposed of.

The lower court records, if any, shall be sent back to the Court below by the Registry forthwith.

In view of the disposal of the appeal itself, the connected application being CAN 7432 of 2016 is also disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)

